

**CALIFORNIA COASTAL COMMISSION**

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**W21a**

February 13, 2003

TO: Commissioners and Interested Parties

FROM: Charles Lester, Deputy Director  
Diane Landry, District Manager  
Steve Monowitz, Coastal Planner

SUBJECT: **SAN LUIS OBISPO COUNTY LOCAL COASTAL PROGRAM MAJOR AMENDMENT NO. 1-01 Part C: Grading and Drainage Ordinance Update.** For public hearing and Commission action at its meeting of March 5, 2003 to be held at the Embassy Suites Hotel (333 Madonna Rd.) in San Luis Obispo.

## **SUMMARY OF STAFF REPORT**

### **DESCRIPTION OF AMENDMENT REQUEST**

The County is proposing to amend the LCP ordinances that regulate grading and drainage in the coastal zone. The existing ordinances, contained in Chapter 5 of the Coastal Zone Land Use Ordinance (CZLUO), are attached to this report as Exhibit 1. They are proposed to be replaced with new and expanded ordinances attached to this report as Exhibit 2. Significant changes proposed by the amendment include new and revised definitions of "grading" and expanded exemptions from grading permit requirements. Specifically, the amendment will:

- Incorporate new definitions of grading within both Chapter 5 and Chapter 11 of the CZLUO. In Section 23.05.024a of Chapter 5 (Site Development Standards), a new definition would be added that classifies grading as earthwork involving more than 50 cubic yards of material and that also involves excavations of certain depths or the creation of slopes with specified heights and steepness. In Chapter 11 (Definitions), the existing definition of grading as "Any excavating, filling or combination thereof", would be replaced with "Any activity which involves the physical movement of earth material".<sup>1</sup>
- Expand exemptions to grading permit requirements for non-agricultural grading activities, such as for certain maintenance activities, exploratory excavations, public utility connections, and vegetation clearing activities.

<sup>1</sup> The new definition in Chapter 11 goes on to state that "This includes and excavating, filling, stockpiling, movement of material, compaction of soil, creation of borrow pits, or combination thereof, but does not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) operating in conformance with Section 23.08.180." Proposed Section 23.05.044 resolves the discrepancy between this definition and Section 23.05.024 in favor of the more limited definition proposed for Chapter 5.



**California Coastal Commission**

- Revise grading permit exemption for agricultural cultivation activities. The existing LCP exempts “agricultural cultivation activities including the preparation of land for cultivation, other than grading for roadwork or pads or structures” from the need to obtain a grading permit. The amendment would replace this exemption with a tiered approach for determining what agricultural grading activities are exempt based on the level of significance of the grading activity, and whether the grading activity incorporates the recommendations and/or review of the County Resource Conservation District.

More generally, the amendment will update the standards and review procedures for grading activities and drainage facilities proposed in the coastal zone. Among other changes, the amendment will:

- Expand information requirements for grading permit applications and drainage plans;
- Update standards for grading activities, drainage facilities, and erosion and sedimentation control plans;
- Strengthen requirements for groundwater recharge measures;
- Clarify criteria and procedures for environmental review of grading and drainage plans;
- Expand the section regarding construction procedures and inspections;
- Add a new section regarding enforcement and interpretation of the grading ordinance; and
- Add a new section of definitions related to grading and drainage.

### **SUMMARY OF STAFF RECOMMENDATION**

The proposed update to the grading and drainage standards presents many important issues and opportunities regarding the implementation of the policies and standards contained in the San Luis Obispo County certified Land Use Plan (LUP), particularly those calling for the protection of coastal watersheds.

As submitted, the amendment falls short of adequately carrying out the LUP objective that “all new development ensure watershed protection” (page 9-6, Policies for Coastal Watersheds), as well as other LUP provisions for the protection of sensitive habitats and scenic and archaeological resources, for the following reasons:

- The amendment proposes to define grading as earthwork involving more than 50 cubic yards of material that also involves excavations of certain depths or the creation of slopes with specified heights and steepness. As a result of this definition, a great deal of grading (defined as development by Coastal Act Section 30106) could take place without a development permit.



Under the new definition, an unlimited amount of earth moving could take place without a development permit, provided that there is no excavation of more than two feet in depth, there is no fill of more than 3 feet in depth, there will be no cut slope of more than 5 feet in height that are steeper than 1.5:1, and that there will be no fill slopes of more than one foot in depth that are steeper than a 2:1 grade. Earth moving activities conducted within these parameters have the potential to adversely impact sensitive habitats, scenic corridors, natural landforms, and archaeological resources. The amendment's definition of grading therefore does not carry out the provisions of the Land Use Plan calling for the protection of these resources. The amendment is also inconsistent with Coastal Act provisions that define grading as development (Section 30106) and require a development permit for all coastal development (Section 30600).

- The amendment would exempt a wide range of development activities from development permit requirements, far beyond those established by Section 30610 of the Coastal Act. As provided by Section 30610(e), exemptions to permit requirements for specific categories of development necessitates approval by two-thirds of the Commission, the adoption of specific findings, and a determination that the exemptions are consistent with the California Environmental Quality Act (CEQA). Approval of these exemptions through the LCP amendment process, which requires only a majority vote by the Commission, would be inconsistent with the Coastal Act and would not ensure that the resource protection objectives of the certified LUP and CEQA would be adequately carried out.
- For those development activities that are subject to compliance with the proposed new grading and drainage standards, the new standards do not provide sufficient safeguards to ensure the effective implementation of LUP resource protection policies. For example, the amendment does not establish the criteria necessary to evaluate whether drainage facilities will be sized and designed in a manner that prevents erosion and the degradation of coastal water quality. Nor does the amendment provide adequate standards and review procedures to ensure that grading, drainage, and other development activities take place consistent with the protection of coastal resources.

Because the proposed amendment does not provide an effective means of carrying out the certified LUP, staff recommends that the Commission deny the amendment as submitted. Staff further recommends that the Commission **approve** the amendment if it is **modified** as suggested. As detailed in this report, the suggested modifications are needed to establish ordinances that will effectively carry out LUP Policies and Coastal Act permit requirements. The modifications also implement many of the recommendations contained in the Periodic Review Of the San Luis Obispo County Local Coastal Program adopted by the Commission in July 2001. In sum, the Suggested Modifications respond to the problems identified above as follows:

- The suggested modifications delete the parameters contained in the proposed definition of grading in order to define and regulate development in a manner that is consistent with Coastal Act procedures and that is adequate to carry LUP policies. At the same time, the suggested



modifications are careful to distinguish grading from earth moving activities associated with the removal or harvest of vegetation for agricultural purposes, which is not considered to be “development” under the Coastal Act or LCP. Specifically, the suggested modifications propose that grading be defined as:

“Any activity which involves the physical movement or disturbance of earth material by mechanized means. This includes any excavating, filling, stockpiling, movement of earth material in connection with clearance of vegetation, compaction of soil, creation of borrow pits, or combination thereof, but does not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) operating in conformance with Section 23.08.180. Grading also does not include plowing, seeding, planting, cultivating, or harvesting activities within an established farming operation, including lands that have been lying fallow as part of a conventional rotational cycle.”<sup>2</sup>

- The suggested modifications delete permit exemptions, other than those provided by Coastal Act Section 30610, to ensure that all coastal development is properly reviewed and permitted<sup>3</sup>. Although grading permit requirements are expanded by the suggested modifications, it is important to note that the application requirements and review procedures have been designed in proportion to the impacts posed by development, based on the location, extent, and quantity of earth moving proposed. Small projects located outside of steep or unstable slopes and sensitive resource areas are not subject to the same in-depth application and review procedures established by the modifications for development posing much more significant impacts.
- Finally, the suggested modifications revise and supplement the proposed amendment so that LCP implementing ordinances contain the specific procedures and standards required to ensure that new development is carried out consistent with LUP Policies protecting coastal resources – particularly those protecting coastal watersheds and environmentally sensitive habitat areas. For example, the suggested modifications establish more specific criteria for sizing and designing pre and post construction drainage control facilities, preserving natural drainage

<sup>2</sup> The underlined portion reflects the new language suggested to be added to the definition proposed by Section 23.05.044 of the amendment. The suggested modification to the definition of grading contained in section 23.05.024 of the amendment replaces the proposed definition with a cross reference to the modified definitions cited above.

<sup>3</sup> The suggested deletion of permit exemptions does not imply that such exemptions could not be approved in the future. As noted by the suggested modifications, exemptions can be incorporated into the LCP in the future through the categorical exclusion process provided by Coastal Act Section. Commission staff is currently working with the County and interested parties within the Morro Bay watershed to develop a Categorical Exclusion that would streamline permit requirements for development of improved drainage and erosion control projects that benefit coastal resources and water quality.



course, reducing impervious surfacing, maintaining pre-development flow levels, maximizing groundwater recharge, and preventing the discharge of pollutants.

### **PROCEDURAL NOTE**

San Luis Obispo County Local Coastal Program Major Amendment No. 1-01 (SLO LCPA 1-01) consists of three parts. Part A (Residential Vacation Rentals) was considered by the Commission on March 7, 2002 and continued. Parts B (Procedural and Clarifying Amendments) was denied as submitted Commission on August 8, 2002 and approved with suggested modifications that were recently rejected by the County. Part C of the amendment, the subjects of this report, involves an update to the LCP's Grading Ordinance. Parts A and C of SLO LCPA 1-01 must be acted on by the Commission no later than by May 16, 2003 meeting, due to Coastal Act time limits.

### **ANALYSIS CRITERIA**

The relationship between the Coastal Act and a local government's Local Coastal Program (LCP) can be described as a three-tiered hierarchy with the Coastal Act setting generally broad statewide policies. The Land Use Plan (LUP) portion of the LCP incorporates and refines Coastal Act policies for the local jurisdiction, giving local guidance as to the kinds, locations, and intensities of coastal development. The Implementation Plan (IP), or zoning portion of an LCP typically sets forth zone districts and site regulations which are the final refinement specifying how coastal development is to proceed on a particular parcel. The IP must be consistent with, and adequate to carry out, the policies of the LUP. The LUP must be consistent with the Coastal Act.

In this case, the proposed LCP amendment affects only the IP component of the San Luis Obispo County LCP. Thus the standard of review for the amendment is consistency with the policies of the LUP.

### **ADDITIONAL INFORMATION**

For further information about this report or the amendment process, please contact Steve Monowitz, Coastal Planner, at the Central Coast District Office of the Coastal Commission, 725 Front St., Suite 300, Santa Cruz, CA 95060; telephone number (831) 427-4863.



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## **I. STAFF RECOMMENDATION**

### **MOTIONS AND RESOLUTIONS**

The Commission needs to make two motions in order to act on this proposal:

### **IMPLEMENTATION PROGRAM AMENDMENT CERTIFICATION WITH SUGGESTED MODIFICATIONS**

**MOTION I:** *I move that the Commission reject Implementation Program amendment 1-01: Part C for San Luis Obispo County as submitted.*

### **STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the Implementation Program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### **RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program amendment submitted for San Luis Obispo County and adopts the findings set forth below on grounds that the Implementation Program amendment as submitted is inconsistent with the land use plan. Certification of the Implementation Program amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program amendment as submitted.

**MOTION II:** *I move that the Commission certify Implementation Program amendment 1-01: Part C for San Luis Obispo County if it is modified as suggested in this staff report.*

### **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.



## **RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies Implementation Program amendment Part B for San Luis Obispo County if modified as suggested below for Part B and certifies Implementation Program amendment Part C for San Luis Obispo County if modified as suggested below for Part C. The Commission hereby adopts the findings set forth below on grounds that the Implementation Program amendment with the suggested modifications is consistent with the land use plan. Certification of the Implementation Program amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

## **II. SUGGESTED MODIFICATIONS**

The Commission hereby suggests the changes to the proposed Local Coastal Program amendment which are necessary to make the requisite findings. If the local government accepts each of the suggested modifications within six months of Commission action, by formal resolution of the Board of Supervisors, the corresponding amendment portion will become effective upon Commission concurrence with the Executive Director finding that this has been properly accomplished.

**Note:** The entire text of the amendment submittal is attached to this report as Exhibit 2. Only those portions of the amendment submittal that are affected by the suggested modifications are repeated below. The suggested modifications below use underlined text to indicate additions to the proposed amendment, and ~~striketroughs~~ to indicate deletions to the proposed amendment.

**Suggested Modification 1:** Revise proposed Ordinance Section 23.05.020 to include water quality protection in purpose and cross-reference other relevant LCP Sections.

**23.05.020 – Purpose and Intent of Grading Regulations:** The Board of Supervisors expressly finds that the regulations, conditions and provisions of this ordinance constitute minimum grading standards and procedures necessary to preserve life, limb, health, property, and public welfare. The following sections establish standards for grading and excavation activities to mitigate or effectively 1) reduce hazards to life and property, 2) reduce the harmful effects of storm water runoff, 3) reduce drainage problems from new development, 4) protect against erosion and sedimentation, 5) enhance slope stability, ~~and~~ 6) encourage groundwater recharge, and 7) protect coastal water quality. In addition, this ordinance: 1) protects natural, scenic, and cultural resources; 2) provides for the safety, use, and stability of public rights-of-way and drainage





channels; and 3) prevents related environmental damage to private and public property. Furthermore, the ordinance establishes the administrative procedure for issuance of permits and provides for approval of plans and inspection of grading construction. Additional standards for grading within a Sensitive Resource Area are found in other sections of this Title, as well as in the Coastal Zone Land Use Plan.

**Suggested Modification 2:** Revise the definition of grading and grading permit requirements in proposed Section 23.05.024 in order to ensure that development activities are reviewed and permitted in accordance with Coastal Act and LCP requirements.

### **23.05.024 Grading Permit Required.**

~~Except as provided in Sections 23.05.026b and c of this Chapter (exemption from grading permit requirements), no~~ No person shall perform undertake any grading as defined in Section 23.05.044 [see page 32 of this staff report] including both excavation or fill, without first obtaining a grading permit for such work, unless the grading activity is exempt from coastal development permit requirements pursuant to 30610 of the Coastal Act and Section 13252 of Title 14 of the California Code of Regulations, or the grading activity has been exempted from permit requirements by a Categorical Exclusion approved by the California Coastal Commission. A separate permit shall be required for each site. Contiguous sites being graded as one integrated project may be considered one site for purposes of this section.

In granting any permit under this Chapter, the ~~director and, where provided, the County Engineer~~ Review Authority, may impose such conditions as may be necessary to prevent creation of a nuisance or a hazard to public health, public safety, or public or private property or to assure conformity to the County General Plan and Local Coastal Program. Where a grading permit application proposes a project that is not otherwise subject to the land use permit requirements of Chapters 23.03 or 23.08 or other applicable section of this title, grading permit approval certifies that the proposed project will satisfy all applicable provisions of the Local Coastal Program and thereby constitutes approval of a coastal development permit. Where a grading permit is appealable to the Coastal Commission pursuant to Section 23.01.043, Minor Use Permit approval is also required as set forth in Section 23.02.033.<sup>[4]</sup>

**a. Grading.** ~~For the purposes of this chapter, "grading" is defined as follows:~~

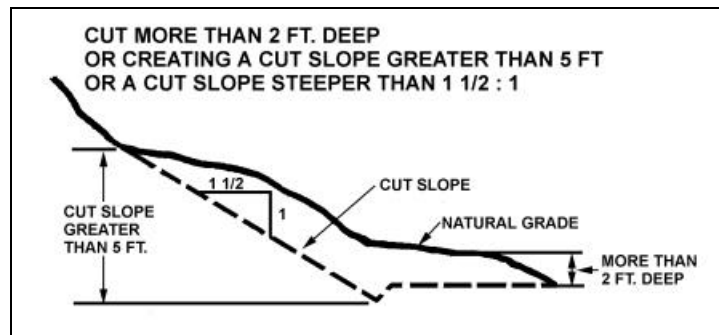
<sup>4</sup> This modification moves and slightly changes the discussion regarding the relationship between grading permits and coastal development permits contained in Section 23.05.030 of the amendment. See Suggested Modification 4.



~~(1) All new earthwork that involves one or more of the following activities: excavations, fills, dams, reservoirs, impoundments, diking, dredging borrow pits, stockpiling, or compaction of fill where the amount of material cumulatively for any of the above mentioned operations exceeds 50 cubic yards; AND~~

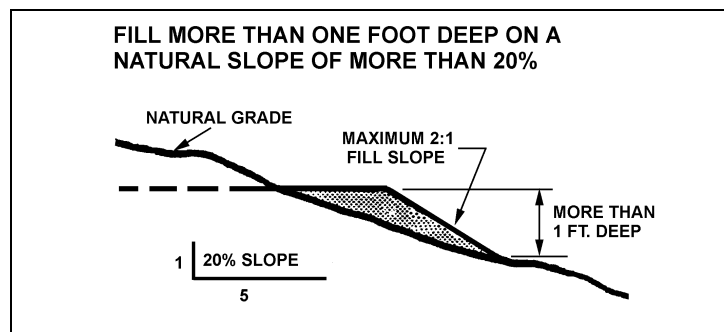
~~(i) The excavation is more than two feet in depth, OR~~

~~(ii) Creates a cut slope greater than five feet in height and steeper than one and one half horizontal to one vertical; OR~~



~~(iii) Where the grading~~

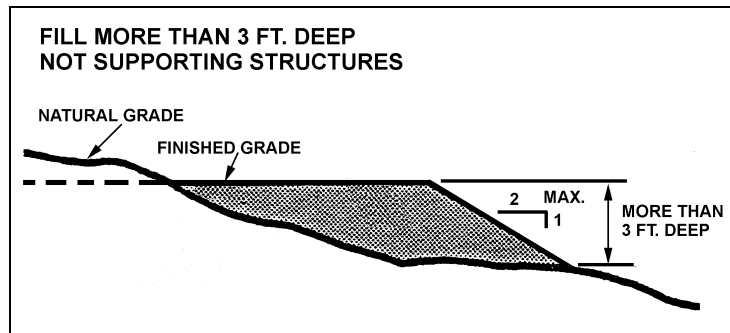
~~is intended to support structures, the fill is more than one foot in depth and placed on natural terrain with a slope exceeding five horizontal to one vertical; OR~~



~~(iv) Where~~

~~the grading is not intended to support structures, the fill is more than three feet in depth, and does not obstruct or alter a drainage course.~~





- b a. Timing of Approval.** A grading permit shall not be approved prior to any of the following: (1) the application for a building permit (if applicable); ~~or prior to~~ (2) approval of, and conclusions of all appeal periods for, all necessary general plan amendments, land use permits or land divisions if such approvals are necessary to completion of any project on the same site associated with the proposed grading; ~~or prior to~~ (3) approval of any state or federal agencies.
- e b. Alternatives or Modifications to Approved Plans.** The issuance of a permit under this Chapter shall constitute an authorization to do only that work which is described or illustrated on the Drainage and Pollution Prevention Plans, grading plans and erosion control plans or specifications approved by the Review Authority ~~director or drainage plans approved by the County Engineer~~. Any alternatives or modifications to approved plans must be approved by the director ~~Planning Director or where applicable, the County Engineer~~, provided that any change which poses new impacts to coastal resources shall require a new grading permit processed in accordance with this Title.
- d c. Corrections to Hazardous Condition.** Whenever the director determines that any existing excavation, constructed embankment or fill on land subject to County regulations has become a hazard to life and limb, endangers property, adversely affects the safety, use or stability of a public right-of-way or drainage channel, or creates a significant environmental impact, the owner of the property, or other person or agent in control of said property, upon receipt of written notice from the director, shall within the period specified therein, correct, repair, or eliminate the condition and conform with the requirements of this code. In an emergency, as defined by Section 23.03.045, the corrective action may be reviewed and processed in accordance with Section 23.03.045 and 23.05.025f, below. In all other situations, the corrective action shall be processed in accordance with Section 23.05.030 of this title (Grading Permit Requirements).



*[Subsection e of the proposed amendment regarding “Professionals Qualified to Prepare Grading Plans” remains unchanged but is renumbered as subsection d.]*

**f e. Emergency ~~Work~~ Grading.** Section 23.03.045 establishes the procedures for issuance of emergency permits in situations that constitute an emergency. Corrections, remedies and repairs that involve grading and are made necessary by an emergency situation involving the a sudden, unexpected occurrence of a break, rupture, flooding or breach of an existing facility which presents an immediate threat to life, health or property, may be made as required before the grading permits are applied for to or issued. Written notification and a description of the work shall be submitted to the director as provided by Section 23.03.045. Permits for emergency work grading shall be applied for within 15 days of commencement of work, and shall be processed according to the procedures established by Section 23.03.045b. This shall include emergency work grading done under the Emergency Watershed Protection Program in cooperation with the USDA Natural Resource Conservation Service and the Resource Conservation Districts.

**~~g. Request for Relief from Ordinance Provisions and Standards.~~**

- ~~(1) — A request for relief from the provisions of this chapter, grading permit conditions of approval, or plan specifications, may be approved, conditionally approved, or denied by the director. A request for relief must state in writing the provision which is to be varied, the proposed substitute provision, when it would apply, and its advantages. The following findings shall be required to approve or conditionally approve a request for relief:~~
- ~~(i) — there are special individual circumstances or conditions affecting the property that make the strict letter of this ordinance impractical; and~~
  - ~~(ii) — No relief shall be granted unless the relief requested, is consistent with the purpose and intent of this chapter and does not diminish the health and safety benefits that would be obtained in the absence of a grant of relief.~~
- ~~(2) — The director may require additional information from professional engineering, engineering geology or geotechnical engineering or erosion control specialists opinions which are necessary to evaluate the requested relief.~~



- ~~(3) As contemplated in this section, the director may grant alternative methods of construction or modifications for projects which could be constructed under the basic standard established in this chapter, but which if relief is granted, can be better or equal to and more economically designed and constructed than if relief were not given. Relief shall not be granted if it would have the effect of allowing the construction of a project which would not be possible under the provisions of the county code without the relief.~~

*[Subsection h of the amendment regarding “Professional Education Program” is unchanged but is renumbered to subsection f.]*

**Suggested Modification 3:** Delete Section 23.05.026, “Exemptions from Grading Permits”, contained on pages 6 - 15 of Exhibit 2 as necessary to carry out the resource protection policies of the Land Use Plan and the permitting requirements established by the Coastal Act.

**Suggested Modification 4:** Revise Section 23.05.030 to require grading applications to include information needed to address potential impacts to coastal resources.

#### **23.05.030 - Grading Permit Requirements:**

- a. Grading Plan Content.** To apply for a grading permit, a plot plan application is to be submitted, together with the additional information required by this section. Where grading that requires a permit is proposed in conjunction with a ~~site plan~~, minor use permit, or development plan request, those applications may be used to satisfy grading permit information requirements as long as all required information is submitted and the grading conforms to the provisions of this title and the Local Coastal Program. This section modifies Section 3309 of the Uniform Building Code. ~~Where a grading permit application proposes a project that is not otherwise subject to the land use permit requirements of Chapters 23.03 or 23.08 or other applicable sections of this title, grading permit approval certifies that the proposed project will satisfy all applicable provisions of this title and thereby constitutes approval of a coastal development permit. Where a grading permit is appealable to the Coastal Commission pursuant to Section 23.01.043, Minor Use Permit approval is also required as set forth in Section 23.02.033.~~<sup>[5]</sup>

A grading permit application is to include a grading plan which includes the information specified by this section. A grading plan is to

<sup>5</sup> This section is not eliminated from the ordinance by the suggested modifications. Rather, it is suggested to be revised and moved to Section 23.05.024 (see Modification 2).



be legible and accurately drawn to scale using standard drafting techniques. Plans shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this chapter and all relevant codes and regulations. Plans shall include, but not be limited to, the following information unless waived by the director:

...

- (9) The location of all existing and proposed roads, buildings, structures, easements, groundwater recharge areas, wells and/or sewage disposal systems on site, and the approximate location of these items on adjacent property ~~ies which are~~ within 100 feet of the property boundary or which may affect or be affected by the proposed project including any wetlands, coastal streams or riparian vegetation. Show spot elevations at corners of existing and proposed buildings or structures and lots where proposed grading will occur.

...

- (16) An estimate of total area in square feet or equivalent metric measurement of natural vegetation to be removed. The type and quantity of all vegetation to be removed shall also be specified by the plan.

...

- b. **Minor Grading Plan Requirements.** Where ~~Section 23.05.026a requires a grading permit and the~~ grading will involve less than 5,000 cubic yards and less than 10,000 square feet of disturbance; is located on slopes less than 20 percent; is not located within a Geologic Study Area or Flood Hazard combining designation, or less than 100 feet from any Environmentally Sensitive Habitat and is not located on soils identified on public soils surveys as being prone to slides or slippage, the application for a grading permit is to include the following, unless waived by the director:

...

- (9) **Erosion and Sedimentation Control Plan (Section 23.05.0342).** Protective measures to be taken during construction, such as hydro-mulching, berms (temporary or permanent), interceptor ditches, subsurface drains, terraces, and/or sediment traps in order to prevent erosion of the cut faces of excavations or of the sloping surfaces of



fills. (Such information shall be submitted in the form of a sedimentation and erosion control component of the drainage and pollution prevention plan pursuant to Section 23.05.0362, when required by that section.)

...

- (11) When required by the Director of Planning and Building, each application for a grading permit shall be accompanied by two sets of supporting data consisting of civil engineering report, soil engineering report, engineering geology report, erosion and sedimentation control report, ~~and/or~~ along with any other reports necessary. ~~In many instances this information may be shown on the face of the plan.~~

...

- c. **Engineered Grading Plan Requirements.** If the grading will involve 5,000 cubic yards or more, disturb 10,000 square feet or more, is located on slopes of 20 percent or greater, or is located within a Geologic Study Area or Flood Hazard area or within 100 feet of any Environmentally Sensitive Habitat, the grading plan is to be prepared and signed by a qualified registered civil engineer or other qualified professional licensed by the state to perform such work, and is to include specifications covering construction, inspection and material requirements in addition to the information required for minor grading (Section 23.05.030b). The following reports shall be required:

- (1) **Site and Drainage Report.** The Site and Drainage Report, which shall be incorporated into the Drainage and Pollution Plan where required by Section 23.05.032, shall include, but not be limited to:

...

- (vii) Structural Best Management Practices (BMPs) to treat stormwater runoff after construction is completed. For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be sized and designed to achieve the Numeric Design Standard (i.e., infiltrate and/or treat stormwater runoff from each storm, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs).

...



**Suggested Modification 5:** Revise Section 23.05.032 to incorporate pollution prevention and erosion control requirements within the standards for drainage facilities, and to supplement requirements for groundwater recharge.

**23.05.032 - Drainage and Pollution Prevention Plan Required:**

- a. Requirement Criteria: The requirements of this section apply to all new development. ~~projects and activities required to have land use permit approval.~~ Drainage and Pollution Prevention plans are reviewed and approved by the County Engineer in accordance with the standards and procedures established by this Title. Drainage and Pollution Prevention plans are to be submitted with or be made part of the Plot Plan, Site Plan, Minor Use Permit, Development Plan or grading permit application for any project that:

...

- (3) Will result in an impervious surface of more than ~~20,000~~ 5,000 square feet; or

...

- (8) Involves land disturbance or placement of structures within 100 feet of the top bank of any stream or creek ~~watercourse shown with a blue line on the most current USGS 7 1/2 minute quadrangle map;~~ or

...

- (11) Involves development on a site adjacent to any coastal bluff or within 100 feet of a wetland.

In any case where a drainage and pollution prevention plan is required by Section 23.05.042 and an environmental determination is not otherwise required by Sections 23.02.033 or 23.03.034 (Minor Use Permit and Development Plan), Chapter 23.07 (Combining Designations), or Section 23.05.030 (Grading Permit Review and Approval), the project application is to be subject to an environmental determination as set forth in Section 23.02.034b(1) before a decision to approve the application, except for single-family residences which are categorically exempt from the provisions of CEQA.

- b. Drainage and Pollution Prevention Plan Content. Drainage and Pollution Prevention plans are to be neatly and accurately drawn, at an appropriate





scale that will enable ready identification and recognition of submitted information. The County Engineer or Planning Director may require drainage and pollution prevention plans to be prepared by a registered civil engineer.

~~(1) Basic Drainage Plan Contents. Except where an engineered drainage plan is required, a Drainage and Pollution Prevention plans is to~~ shall include the following information about the site and the proposed drainage and pollution prevention measures in sufficient detail to determine that project implementation will comply with the water quality and other standards established in Section 23.05.040. This information shall include, but not be limited to, the following components:

(1) Pre and Post Development Site Drainage Information.

- (i) Flow lines of surface and subsurface waters onto and off the site, including a description of all water courses, impoundments, flood areas and wetlands on or adjacent to the site or into which storm water directly flows. The Drainage and Pollution Prevention Plan shall delineate and describe the location and extent of all floodplains, drainage corridors, and all wetlands contained on the site.
- (ii) Existing and finished contours at two-foot intervals or other topographic information required by the County Engineer.
- (iii) Building pads, finished floor and street elevations, areas of impervious surfaces, and any easements and rights-of-way; existing and proposed.
- (iv) Location and graphic representation of all existing and proposed natural and man made drainage facilities for storage or conveyance of runoff, including drainage swales, ditches, culverts and berms, sumps, sediment basins, channels, ponds, storm drains and drop inlets. In addition, private sewage disposal systems must be shown. Include detailed construction plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with or as a part of the proposed work, together with a map showing the drainage area and hydraulic calculations showing the facilities flow carrying capacities and justifying the estimated runoff of the area served by any drain. Include design discharges and velocities for conveyance devices, and storage volumes of sumps, ponds, and sediment basins.
- (v) Estimates of existing and increased runoff resulting from the proposed improvements and methods for reducing velocity of any increased runoff.



- (vi) Proposed flood-proofing measures where determined to be necessary by the County Engineer.
- (vi) An evaluation of the effects of projected runoff on adjacent properties and existing drainage facilities and systems.
- (vii) The type, size, and location of all Best Management Practices included in the site design to protect water quality and achieve the water quality standards of section 23.05.040. The plan should include calculations demonstrating that structural BMPs (or suites of BMPs) have been sized and designed to achieve the Numeric Design Standard (i.e., infiltrate and/or treat stormwater runoff from each storm, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs).
- (viii) A maintenance program that identifies the type and schedule of maintenance activities that will be implemented by the property owner to ensure that drainage facilities are operating effectively for the life of the project.

(2) Groundwater Recharge Component

- (vi) ~~M~~ Drainage and Pollution Prevention Plans shall identify the methods for enhancing groundwater recharge that have been incorporated into the project design or an explanation of non-necessity of groundwater recharge for this site, unless site conditions are inappropriate for recharge as established by Section 23.05.035. The Groundwater Recharge Component of the Plan shall identify how the project has minimized the use of impervious surfaces, clustered building site locations, and limited roads and driveways to their smallest functional size. The groundwater recharge component of the plan shall also, where site conditions allow, provide for the use of vegetated drainage systems that protect and enhance natural drainage patterns, and the use of pervious materials for the construction of driveways, walkways, parking areas, and other outdoor surfacing. Where the use of pervious material is not feasible, the plans shall directing drainage to pervious areas on-site for infiltration through grassy swales or vegetation filter strips. Groundwater recharge features shall be designed and maintained consistent with the standards established by Section 23.05.040f.
- (vii) ~~Proposed flood-proofing measures where determined to be necessary by the County engineer.~~



- c. ~~Engineered Plan Content. Engineered drainage plans are to include an evaluation of the effects of projected runoff on adjacent properties and existing drainage facilities and systems in addition to the information required by subsection b. of this section.~~

**Suggested Modification 6:** Incorporate Ordinance 23.05.034 into Section 23.05.032 (above) so that, when required, erosion and sedimentation controls are contained within the Drainage and Pollution Prevention Plan.

**23.05.034— (3) Erosion and Sedimentation Control Plan Required:**

- a. **Requirements.** An erosion and sedimentation control plan shall be required as part of the Drainage and Pollution Prevention Plan ~~grading permit application~~ except when all of the following site characteristics exist:

...

- (4) ~~The Site~~ is located more than 300 feet from the top bank of any stream or creek ~~blue line water course or water feature shown on the most current 7 1/2 minute USGS quadrangle map.~~

...

- (7) All grading and site disturbance activities will: 1) occur after April 15 and before October 15 ~~1~~ and 2) will create minimal site disturbance.

...

- c. **Regional Water Control Board Review.** ~~For projects that disturb greater than five acres of land, the~~ The Erosion and Sedimentation Control component Plan must ~~shall be included with part of~~ a Storm Water Pollution Prevention Plan as required for compliance with NPDES Storm Water Discharge General Permits for Construction Activity administered by the State Water Resources Control Board and the Regional Water Quality Control Board.

...

**Suggested Modification 7:** Revise Section 23.05.035 to supplement standards for groundwater recharge.

**23.05.035 - Groundwater Recharge.**

...



- b. Groundwater Recharge. All development on sites that do not meet the above criteria shall include provisions to maximize groundwater recharge, among other means by minimizing the use of impervious surfaces, clustering building site locations, and limiting roads and driveways to their smallest functional size. Where the use of pervious material is not feasible, the plans shall direct drainage to pervious areas on-site for infiltration through grassy swales or vegetation filter strips. All areas on the project site that will become impervious or will have their soil permeability impaired (such as compacting soil under an all weather driveway) must be mitigated to the maximum extent practicable with recharge enhancement elsewhere on the parcel. Offsite mitigation is a secondary alternative when effective onsite recharge is not possible. Where a Drainage and Pollution Prevention Plan is required by Section 23.05.032, groundwater recharge provisions shall be identified by Groundwater Recharge Component of the plan.

The Design Elements for Enhancing Groundwater Recharge handout available from the Department of Planning and Building has numerous ideas and design elements that can be incorporated into the project. This is not a complete list; developers are encouraged to incorporate other ideas that will retain water in a manner that encourages soil contact and percolation. The project plans should clearly indicate the capacity of each recharge area



**Suggested Modification 8:** Revise Section 23.05.036 to clarify permitting requirements and review procedures.

### **23.05.036 - Review, Approval and Permits:**

#### **a. Environmental Review.**

- (1) Environmental Determination.** As required by Title 14 of the California Administrative Code, all grading permit applications are to be reviewed by the Environmental Coordinator for an environmental determination pursuant to the California Environmental Quality Act (CEQA). This section does not apply to those applications that are deemed exempt from the provisions of CEQA pursuant to section 15304 or 15061(b)(3) of the State CEQA Guidelines. Exempt applications are those that propose grading on terrain with slopes less than 10 percent, will involve less than 5,000 cubic yards of earth moving, are not located within a Sensitive Resource Area combining designation, and are consistent with the criteria for approval in subsection b(1) of this section.

In any case where a drainage and pollution prevention plan is required by Section 23.05.034 and an environmental determination is not otherwise required by Section 23.02.034 (Development Plan), Chapter 23.07 (Combining Designations), Section 23.05.030c(3) (Exemption from Permit Requirements), the project application is to be subject to an environmental determination by the Environmental Coordinator as set forth in Section 23.02.034b(1) before a decision to approve the application, except for single-family residences which are exempt from the provisions of CEQA. As part of this determination, the Environmental Coordinator shall prepare and apply a checklist or equivalent tool to help in the review of potential impacts to water quality. Such a checklist shall, at a minimum, include questions about the management practices proposed to reduce the impact of polluted runoff, area of impervious surface to be created, uses of the development that might generate polluted runoff and proximity of the development to coastal waters or drainage ways that lead to coastal waters or sensitive coastal resources. This review procedure shall identify the potential water quality impacts from the development, and prescribe appropriate site design, source control or treatment control BMPs necessary to address those impacts.

Unless exempt, no action shall be taken to approve, conditionally approve, or deny a grading permit or drainage and pollution prevention



plan until it is:

...

**b. Approvals.**

**(1) Criteria for Approval.**

- (i) **Grading Plan.** A grading permit may be issued where the director of Planning and Building first finds, where applicable, that:

...

- (g) ~~Unless overriding findings have been made,~~ the proposed grading will not create substantial adverse long-term visual effects.

...

- (ii) **Drainage and Pollution Prevention Plan.** All drainage and pollution prevention plans are to be submitted to the County Engineer for review, and are subject to the approval of the County Engineer, prior to issuance of a land use, grading or construction permit, as applicable. Actions of the County Engineer on drainage and pollution prevention plans may be appealed to the Board of Supervisors in accordance with the procedure set forth in Section 23.01.042a of this title; except that where the site is within a Flood Hazard combining designations, the procedure described in Section 23.07.066d shall be used.

...

- (4) Restriction on Grading Approvals.** If grading is for the creation of, or access to, a building site, land disturbance shall not take place until a building permit has been issued ~~accepted for processing~~. If grading is for a proposed project which requires discretionary approval, grading shall not take place until approval(s) are received and required appeal periods expire. If plan approval cannot be issued until determination of adequate water and/or sewage disposal or other required site investigation is made, land disturbance shall be limited to the extent necessary to allow such an investigation. Erosion control measures and/or site restoration shall be required after site investigations are completed. This provision shall not apply to subdivision improvements or road construction required as a condition of approval of a land division, provided that such roads and



improvements are designed and constructed in compliance with all standards and requirements of this Title.

**c. Permits.**

- (1) **Grading Permit Application Procedure.** An application for grading permit consists of written and graphic information. The written information required is identified in the Section 23.05.030a, Grading Permit Application Content. The graphic information is identified in the Section, Grading Plan Required. Not all applications require the same level of information. In some situations, additional information may be required after initial review based upon the nature, degree, or location of proposed work.

(2) **Time Limits of Permits.**

- (i) An approved grading permit is valid for a period of 120 days from the effective date of the permit, or until expiration of the land use permit associated with the grading (whichever is less), after which the permit shall expire unless:

...

- (iii) **Extension of grading permit.** Any permit holder with an unexpired grading permit may apply for an extension of the time within which grading operations are to be begun or completed. The director may extend the expiration date of the permit for a period not exceeding 180 days, or until the land use permit associated with the grading activities is set to expire (whichever is less), where the permit holder has requested such extension in writing and has shown that circumstances beyond the control of the permit holder have prevented commencement or completion of grading. The director may extend the permit for additional periods of 180 days, or until the land use permit associated with the grading activities is set to expire (whichever is less), after a site investigation confirms that grading activities and site conditions conform to the provisions of this title, and where proper completion of grading, temporary and final sedimentation and erosion control measures (Section 23.05.034) in accordance with the provisions of this title have been assured through a bond or other guarantee of performance (Section 23.02.060). Any extension of a grading permit that constitutes a coastal development permit pursuant to Section 23.05.030 shall be processed in accordance with Section



23.02.050e.

...

**(4) Denial of Permits - Restoration.**

- (i) If grading operations are commenced before first securing a proper permit, no permit will be issued until all illegal grading has been stopped except to restore the site to its original condition or to correct hazardous conditions to the satisfaction of the director, and all violation fines levied as misdemeanors or civil penalties are paid in full. The director may require approval and implementation of an erosion and sedimentation control plan in the interim if weather or site conditions warrant such action. In the event that no grading permit, erosion control permit, or Land Use Permit consistent with this title can be issued for ~~such~~ the unpermitted grading operations, the site shall be restored to an acceptable condition as determined by the director pursuant to all applicable permitting requirements and development standards of this title.
  
- (ii) If restoration is required of a site by the director, restoration plans, prepared by a certified Sediment and Erosion Control Specialist or by other additional qualified professionals at the discretion of the director, shall be submitted for review and approval prior to any restoration. The ~~permit holder~~ applicant shall pay a restoration permit fee, in addition to any applicable penalties and other required permit fees, which shall be equal to the fee that would be charged for a grading permit fee for the same work. Restoration shall be ~~made~~ carried out in conformity with the approved restoration plans and all other approved permits and plans required by this title.

...

**Suggested Modification 9:** Revise Section 23.05.038 clarify permit amendment requirements and require that the timing of grading activities avoid impacts to sensitive habitats.

**23.05.038 - Construction and Inspections:**

**a. Construction Procedures.**

...

- (2) Modifications to Approved Plans.** No work based upon any





modifications to the approved plans shall proceed unless and until such modifications have been approved by the Director of Planning and Building, and where applicable, the County Engineer. As required by section 23.05.024c, the proposed change shall not result in greater environmental impacts not considered in the approved environmental document; any changes that pose new impacts to coastal resources shall require a new grading permit processed in accordance with this Title. Change orders must be reviewed expeditiously to allow the job to be able to proceed.

...

- (4) Grading Hours - Limitations.** No grading work (except for agricultural exemptions and emergency operations specified in Section 23.05.026(f), which requires a grading permit under the provisions of this Chapter shall take place between the hours of 7:00 p.m. and 7:00 a.m. weekdays and between the hours of 5:00 p.m. and 8:00 a.m. on the weekends, unless the director or approved conditions of a land use permit finds that such operation is not likely to cause a significant public nuisance or adverse environmental impact and authorizes expanded or night operations in writing. Hours of operation on the weekends or near sensitive habitats may be further regulated by conditions of the grading permit or associated land use permit.

...

**Suggested Modification 10:** Revise Section 23.05.040 to establish Water Quality Standards and supplement grading, drainage, erosion control, and other standards.

#### **23.05.040 - Standards:**

- a. **Water Quality Standards.** Development shall not result in the degradation of coastal waters caused by the introduction of pollutants, or by changes to the landscape that adversely impact the quality, quantity and flow dynamics of coastal waters. Runoff shall not be discharged in a manner that adversely impacts coastal waters. All new development, and all grading, drainage and pollution prevention plans, shall demonstrate consistency with these standards and achieve the following:
  - (1) **Maintain Post-development peak runoff rates.** Post-development peak runoff rates and volumes shall be maintained at levels similar to pre-development conditions;



(2) **Maintain and Restore Natural Drainage.** The applicant shall design development to protect and restore natural drainage systems;

(3) **Minimize Pollutant Loads.** Site design and source control Best Management Practices (BMPs) shall be included in all new development. The applicant shall demonstrate that the selected suite of BMPs shall minimize pollutant loads and mitigate impacts on water quality by capturing, filtering or treating all drainage subject to pollutants. BMPs shall be incorporated into the project design in the following progression:

- Site Design BMPs (any project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces or minimizing grading);
- Source Control BMPs (practices that prevent release of pollutants into areas where they may be carried by runoff, such as covering work areas and trash receptacles, practicing good housekeeping, and minimizing use of irrigation and garden chemicals);
- Treatment Control BMPs (a system designed to remove pollutants from runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process). Where the development poses a threat to water quality due to its size, type of land use or proximity to coastal waters (or proximity to a creek, channel or stormdrain system that leads to coastal waters) and the combination of site design and source control BMPs is not sufficient to protect water quality, treatment control BMPs shall be implemented.

(4) **Manage Stormwater Runoff.** Design post-construction structural BMPs (or suites of BMPs) to infiltrate and/or treat stormwater runoff consistent with the stormwater runoff numeric design standard of this ordinance (see Definitions, section 23.05.044).

**a. b. Grading Standards.**

(1) **Area of Cuts and Fills.** Cuts and fills shall be limited to the minimum amount necessary to provide stable embankments for approved development (e.g., required parking areas or street rights-of-way, structural foundations, and adequate residential yard areas, or outdoor storage of or sales area incidental to a non-residential use).

...

(3) **Grading Adjacent to Environmentally Sensitive Habitats.** Grading



shall not occur within 100 feet of any Environmentally Sensitive Habitat as shown in the Land Use Element except:

...

**(4) Landform Alterations within Public View Corridors.** Grading, vegetation removal and other landform alterations shall be minimized on sites located within ~~areas determined by the director to be a public view corridors from collector or arterial roads.~~ Where feasible, contours of finished grading are to blend with adjacent natural terrain to achieve a consistent grade and appearance.

**(5) Grading near Watercourses.** Grading, dredging or diking (consistent with Section 23.07.174) shall not alter any intermittent or perennial stream, or natural body of water ~~shown on any USGS 7 1/2 minute map,~~ except as permitted through approval of a county land use permit or grading permit as applicable, drainage and pollution prevention plan, and a streambed alteration permit from the California Department of Fish and Game issued under Section 1601 or 1602 of the Fish and Game Code and as provided by Section 3 above. In addition, the grading must be consistent with the Clean Water Act, Section 404 permits from the US Army Corps of Engineers, SWA, Section 401 Water Quality Certification or Waste Discharge Requirements from the Regional Water Quality Control Board, ~~as~~ as appropriate. (Additional standards are contained in Sections 23.07.172 through 174 of this title.) Watercourses shall be additionally protected as follows:

...

All temporary diversions and fill, as well as all construction materials and debris, shall be removed immediately at the conclusion of construction.

**(6) Revegetation.** Where natural vegetation has been removed through grading in areas not affected by the landscaping requirements (Section 23.04.180 et. seq. - Landscaping, Screening and Fencing), and that are not to be occupied by structures, such areas are to be replanted as set forth in this subsection to prevent erosion after construction activities are completed.

...

**(ii) Methods of Revegetation.** Acceptable methods of revegetation include hydro-mulching, or the planting of rye grass, barley or other



seed with equivalent germination rates. Where lawn or turf grass is to be established, lawn grass seed or other appropriate landscape cover is to be sown at not less than four pounds to each 1,000 square feet of land area. Other revegetation methods offering equivalent protection may be approved by the Building Official. Plant materials shall be watered at intervals sufficient to assure survival and growth. Native plant materials are encouraged to reduce irrigation demands, and exotic species that pose a threat to native habitats due to their invasive nature (e.g. ice plant, pampas grass, scotch broom, acacia, eucalyptus, etc.) are strictly prohibited. Where riparian vegetation or native plant species have been removed, riparian the same plant species shall be used for revegetation at equal or greater quantities and extent to that which existed on the site prior to grading.

...

**(iv) Revegetation Success.** Revegetation required as part of grading activities shall be monitored and maintained by the permittee. The Planning Director may require specific monitoring and maintenance activities and plans, as well as corrective actions, to ensure that the revegetation requirements of this title are satisfied.

...

**b. c. Drainage Standards.** Drainage systems and facilities subject to drainage and pollution prevention plan review and approval that are to be located in existing or future public rights-of-way are to be designed and constructed as set forth in the county Engineering Department Standard Improvement Specifications and Drawings and Storm Water Quality Task Force *California Storm Water Best Management Practice Handbooks*. Other systems and facilities subject to drainage plan review and approval are to be designed in accordance with good engineering practices. ~~A Master Drainage Plan shall be required as part of the grading plan for all grading permit applications.~~ Designs for site area drainage and terraces shall conform to the requirements for fill activities established by this chapter as well as the following provisions:

...

(17) Runoff computations may be made by the rational method except where specific methods for calculating individual residential retention basins have been adopted (e.g., the 85% Numeric Design Standard for structural



BMP's).

...

**e. d. Dam and Reservoir Standards.**

NOTE: All surface stream water impoundments require approval of an application to appropriate water from the California State Water Resources Control Board, Division of Water Rights.

- (1) ~~Agricultural stock ponds less than two (2) acre feet in capacity are exempt from permit requirements. Agricultural stock ponds that are between two (2) acre feet and ten (10) acre feet in capacity may be exempted if the plans are determined to be consistent with accepted design and conservation sites are approved by qualified professionals including a civil engineer, U.S. Department of Agriculture, Natural Resource Conservation Services, Resource Conservation District (or its successor agency). All other Grading permits shall be required for the construction of all dams, reservoirs and impoundments in accordance with Sections 23.05.024 and 23.05.030. require a grading permit unless the design is prepared or approved by, and is inspected and certified by, the U. S. Department of Agriculture, Natural Resource Conservation Service, or State of California Department of Water Resources and the work is exempt from the California Environmental Quality Act.~~

...

**d. e. Erosion and Sedimentation Control Standards.** Erosion and sediment control measures shall be required as part of the grading plan requirements. Plan contents and standards shall be as specified in Section 23.05.032 ~~23.05.034~~ (Erosion Control Plan Required).

...

- (3) All earth fills and disturbed areas shall be planted, mulched and maintained, or otherwise protected from the effects of storm runoff and wind erosion. Permanent or temporary soil stabilization must be applied to denuded areas within 15 days after final grade is reached on any portion of the site. Denuded areas which may not be at final grade but which will remain undisturbed for longer than 60 days shall also be stabilized within 15 days. All mulching shall provide the same protection as that resulting from the application of two (2) tons of straw mulch per one acre of surface area. All disturbed or denuded areas created during the period between ~~November 15~~ October 1 and ~~March~~ April 15 of the



~~following year~~ shall be mulched or equally protected before quitting time each day.

...

- (11) Runoff shall enter and exit a basin through protected inlets and outlets as approved by the director and shown on approved plans and permits required by this title.
- (12) Sediment removal scheduling and sediment dispersal shall be as approved by the director and shall be subject to the grading permit requirements of this title.
- (13) Temporary drainage control measures installed during construction shall be designed to avoid concentration of flow which may cause or exacerbate erosion and sedimentation.

**e. f. Groundwater Recharge Standards.** Groundwater recharge measures shall be required as part of the site plan requirements. Plan contents and standards shall be as specified in Section 23.05.035 and as listed below:

- (1) Stormwater impound areas shall be located to use the most permeable soils on the project site, where practical, and shall be setback at least 100 feet from environmentally sensitive habitat areas.
- (2) Stormwater impound areas shall be sufficiently shallow or properly shielded so that they do not pose a safety hazard.
- (3) Storm water impound areas shall drain fast enough or be designed so that ponded water does not become a vector habitat (mosquito pond). Alternatively, storm water impound areas may be designed to mimic a natural wetland habitat, provided that they are designed and maintained in a manner that prevents a public nuisance or health hazard.

...

**Suggested Modification 11:** Revise and supplement definitions contained in Section 23.05.044.

**23.05.044 - Definitions:** The following definitions pertaining to grading and erosion control shall apply to the interpretation and enforcement of this chapter. In addition to the following definitions, the definitions contained in Section 23.11.030 are incorporated into this chapter as though they were fully set forth here. Where any of the definitions conflict with other titles of the County Code, this chapter prevails for the purposes of this title.



NOTE: \_ This denotes that the definition is presently found in Chapter 11 of the Coastal Zone Land Use Ordinance; however some changes have been made in the wording of the definition.

...

**Agricultural Drainage Channels** - Drainage channels to direct irrigation, natural drainage and tailwaters to and from agricultural fields. Agricultural Drainage Channels do not include creeks, streams, and rivers.

...

**Best Management Practices (BMPs)** - Sets of on-the-ground measures that control the input of non-point source pollutants into ground or surface waters. Such BMPs can be either Structural or Non-structural in nature and when designed and implemented correctly can mitigate the impacts associated with new development. Types of Best Management Practices include:

- Nonstructural Best Management Practices that (a) Conserve natural drainage areas; (b) Direct rooftop and other impervious surface runoff to permeable or vegetated areas; c) Direct sheet flow to vegetated buffers; (d) Use porous materials; (e) Use grass channels; and (f) Design and site development to maximize filtration and percolation.
- Structural Best Management Practices such as (a) Stormwater management ponds; (b) Stormwater management wetlands; (c) Stormwater management infiltration; (d) Stormwater management filtering systems; and (e) Stormwater management open channel systems.

...

**Grading** – Any activity which involves the physical movement or disturbance of earth material by mechanized means. This includes any excavating, filling, stockpiling, movement of earth material in connection with clearance of vegetation, compaction of soil, creation of borrow pits, or combination thereof, but does not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) operating in conformance with Section 23.08.180. Grading also does not include plowing, seeding, planting, cultivating, or harvesting activities within an established farming operation, including lands that have been lying fallow as part of a conventional rotational cycle.

...



**Guidance Manuals:**

- Model Urban Runoff Program. “Appendix 3T Best Management Practices,” *Model Urban Runoff Plan, Post-Construction Controls for New Development*.
- Storm Water Quality Task Force. *California Storm Water Best Management Practice Handbooks*, March 1993.
- US Environmental Protection Agency. *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* [CZARA 6217(g) Guidance].
- Bay Area Stormwater Management Agencies Association (BASMAA) *Start at the Source; Residential Site Planning and Design Guidance Manual for Stormwater Quality Protection*. January 1999.

...

**Habitat, Environmentally Sensitive** - ~~Any type of Sensitive Resource Area~~ Area where plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. They include but are not limited to wetlands, coastal streams and riparian vegetation, terrestrial and marine habitats ~~and are mapped as Land Use Element combining designations.~~

...

**Numeric Design Standard.** Sizing post-construction BMPs to accommodate the runoff from the 85<sup>th</sup> percentile storm runoff event. The “85<sup>th</sup> percentile, 24-hr” Numeric Design Standard is applicable to volume-based BMPs such as detention and infiltration basins, wet ponds, and constructed wetlands. The “85<sup>th</sup> percentile, 1-hr” Numeric Design Standard (with an appropriate safety factor<sup>6</sup>) is applicable to flow-based BMPs that remove pollutants primarily through filtering and limited settling. These include media filters such as filter inserts in catch basins, oil/water separators, and biofilters such as vegetated filter strips and grassy swales.

...

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<sup>6</sup> The San Diego RWQCB has adopted a safety factor of “2” for their flow-based BMP design standard. This means doubling the runoff treatment capacity necessary to handle the local 85<sup>th</sup> percentile hourly rainfall intensity. The safety factor is meant to deal with the reduced efficiency that occurs with flow-through BMPs that are not adequately maintained.





**Stream/Creek, “Blue Line”** - any bed, channel or bank of any river, stream or lake as shown with a “blue” line on a USGS 7-1/2 minute (1:24,000) quadrangle map. The surface or subsurface water flow within these “blue” line delineations could be perennial, intermittent, or ephemeral. Streams/creeks also include other bodies of water not shown on USGS 7-1/2 minute quadrangles that flow at least periodically or intermittently through a bed or channel having banks and support fish or other aquatic life. This includes watercourses having a surface or subsurface flow that supports or has supported riparian vegetation.

...

**Structure** - Any artifact constructed or erected, the use of which requires attachment to the ground, including but not limited to any buildings, ~~but not including fences or walls six feet or less in height or open wire fencing.~~

...

### III. RECOMMENDED FINDINGS

#### A. Background

The San Luis Obispo County certified LCP is composed of seven parts: the Coastal Zone Land Use Ordinance, which is the Implementation Plan (IP) portion of the LCP; the Framework for Planning, the Coastal Plan Policies, and four Area Plans, which make up the Land Use Plan (LUP). The Commission approved the LUP with modifications on October 14, 1982, and the IP was approved as submitted on October 7, 1986. The County assumed permit-issuing authority on March 1, 1988.

The County is proposing a number of changes to the certified Implementation Plan (IP) regulating grading and drainage. To approve these changes, the Commission must find that they are consistent with and adequate to carry out the Land Use Plan (LUP). The sections of the IP proposed for change by the amendment provide the primary means for implementing LUP policies regarding the protection of coastal watersheds. They also implement LUP policies protecting sensitive biological, scenic, and archaeological resources.

Moreover, the sections of the CZLUO proposed for amendment play a critically important role in the LCP’s regulatory framework. Most commonly, coastal development permits issued by San Luis Obispo County take the form of a Land Use Permits (i.e., Plot Plans, Minor Use Permits, or Development Plans), and grading and drainage standards are applied during land use permit review. Land use permit/coastal development permits issued by the County often include conditions requiring permittees to obtain a grading permit and/or submit grading, drainage, and/or erosion control plans for County approval prior to commencing construction. However, in some instances where grading is the only development proposed, no land use permit may be required. In these situations, the requirement for a grading permit is equivalent to the requirement for a coastal development permit, and must be processed and noticed accordingly. Figure One, on the



following page, illustrates this relationship.

## **B. Amendment Description**

The County is proposing to amend the LCP ordinances that regulate grading and drainage in the coastal zone. The existing ordinances, contained in Chapter 5 of the Coastal Zone Land Use Ordinance (CZLUO), are attached to this report as Exhibit 1. They are proposed to be replaced with new and expanded ordinances attached to this report as Exhibit 2. Significant changes proposed by the amendment include new and revised definitions of “grading” and expanded exemptions from grading permit requirements. Specifically, the amendment will:

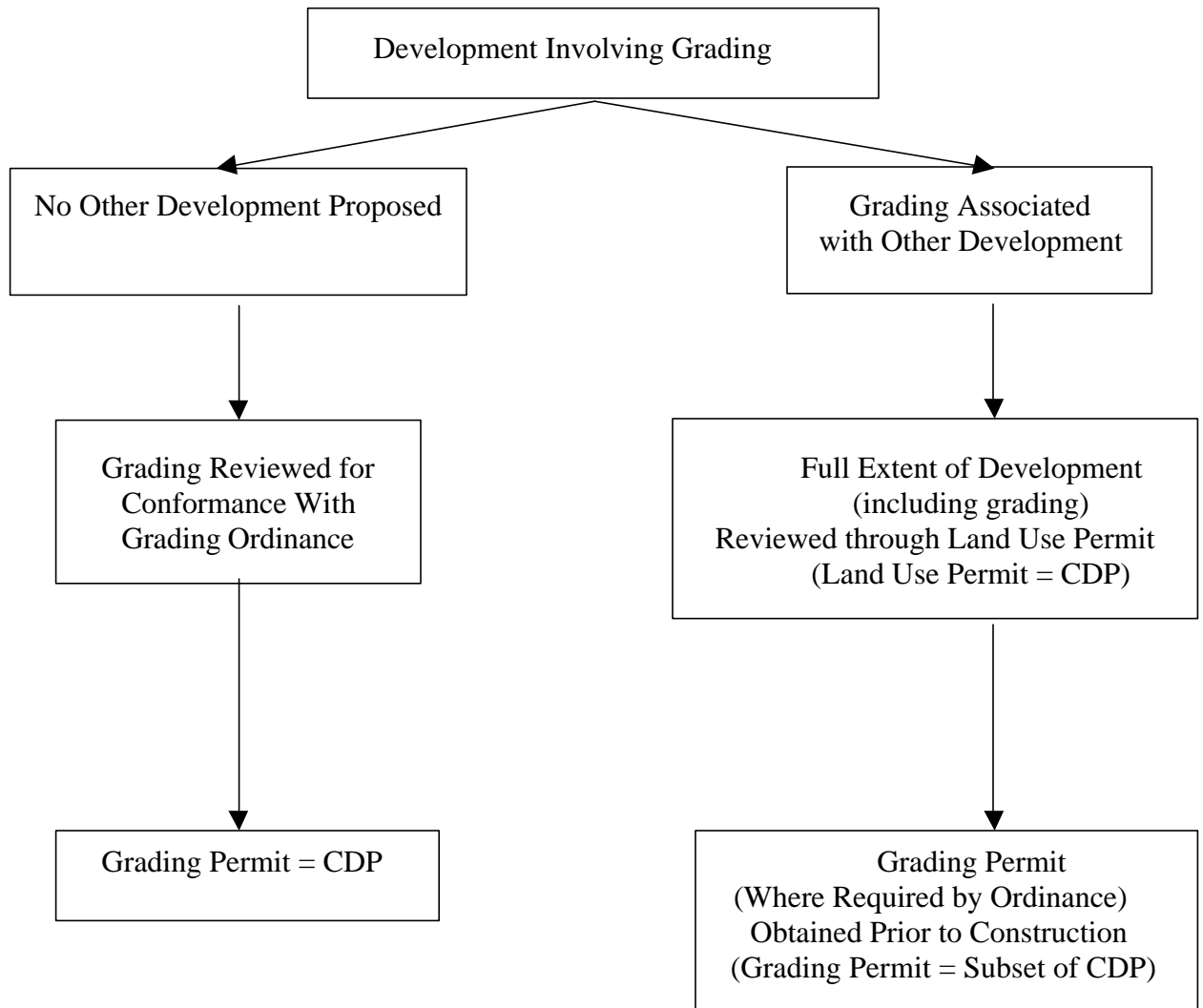
- Incorporate new definitions of grading within both Chapter 5 and Chapter 11 of the CZLUO. In Chapter 5 (Site Development Standards), a new definition would be added that defines grading as earthwork involving more than 50 cubic yards of material and that also involves excavations of certain depths or the creation of slopes with specified heights and steepness. In Chapter 11 (Definitions), the existing definition of grading as “Any excavating, filling or combination thereof”, would be replaced with “Any activity which involves the physical movement of earth material”.<sup>7</sup>
- Expand exemptions to grading permit requirements for non-agricultural grading activities, such as for certain maintenance activities, exploratory excavations, public utility connections, and vegetation clearing activities.

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<sup>7</sup> The new definition in Chapter 11 goes on to state that “This includes and excavating, filling, stockpiling, movement of material, compaction of soil, creation of borrow pits, or combination thereof, but does not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) operating in conformance with Section 23.08.180.” Any discrepancy between the Chapter 5 and Chapter 11 definitions, as they apply to the regulation of grading activities, would be resolved in favor of the more limited version contained in Chapter 5 by virtue of proposed Section 23.05.044.



Figure 1: Relationship between Grading and Coastal Development Permits



- Revise grading permit exemption for agricultural cultivation activities. The existing LCP exempts “agricultural cultivation activities including the preparation of land for cultivation, other than grading for roadwork or pads or structures” from the need to obtain a grading permit. The amendment would replace this exemption with a tiered approach for determining what agricultural grading activities are exempt based on the level of significance of the grading activity, and whether the grading activity incorporates the recommendations and/or review of the County Resource Conservation District.

More generally, the amendment will update the standards and review procedures for grading activities and drainage facilities proposed in the coastal zone. Among other changes, the amendment will:

- Expand information requirements for grading permit applications and drainage plans;
- Update standards for grading activities, drainage facilities, and erosion and sedimentation control plans;
- Strengthen requirements for groundwater recharge measures;
- Clarify criteria and procedures for environmental review of grading and drainage plans;
- Expand the section regarding construction procedures and inspections;
- Add a new section regarding enforcement and interpretation of the grading ordinance; and
- Add a new section of definitions related to grading and drainage.

## C. Amendment Analysis

### 1. Water Quality

#### a) Policies

Chapter 9 of the Coastal Plan Policies document of the San Luis Obispo County certified Land Use Plan (LUP) contains the following policies related to the protection of water quality and coastal watersheds:

**Policy 1: Preservation of Groundwater Basins.** *The long-term integrity of groundwater basins within the coastal zone shall be protected. The safe yield of the groundwater basin, including return and retained water, shall not be exceeded except as part of a conjunctive use or resource management program which assures that the biological productivity of aquatic habitats are not significantly adversely impacted. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*



**Policy 7: Siting of New Development.** *Grading for the purpose of creating a site for a structure or other development shall be limited to slopes of less than 20 percent except:*

*Existing lots of record in the Residential Single-Family category and where a residence cannot be feasibly sited on a slope less than 20 percent;*

*When grading of an access road or driveway is necessary to provide access to an area of less than 20 percent slope where development is intended to occur, and where there is no less environmentally damaging alternative;*

*The county may approved [sic] grading and siting of development on slopes between 20 percent and 30 percent through Minor Use Permit, or Development Plan approval, if otherwise required by the Coastal Zone Land Use Ordinance.... In allowing grading on slopes between 20 percent and 30 percent the county shall consider the specific characteristics of the site and surrounding area that include but are not limited to: the proximity of nearby streams or wetlands, the erosion potential and slope stability of the site, the amount of grading necessary, neighborhood drainage characteristics and measures proposed by the applicant to reduce potential erosion and sedimentation. The county may also consider approving grading on slopes between 20 percent and 30 percent where it has been demonstrated that there is no other feasible method of establishing an allowable use on the site without grading. Grading and erosion control plans shall be prepared by a registered civil engineer and accompany any request to allow grading on slopes between 20 percent and 30 percent. It shall also be demonstrated that the proposed grading is sensitive to the natural landform of the site and surrounding area.*

*In all cases, siting of development and grading shall not occur within 100 feet of any environmentally sensitive habitat. In urban areas as defined by the Urban Services Line, grading may encroach within the 100 foot setback when locating or siting a principally permitted development, if application of the 100 foot setback renders the parcel physically unusable for the principally permitted use. Secondly, the 100 foot setback shall only be reduced to a point at which the principally permitted use, as modified as much as practical from a design standpoint, can be accomplished to no point less than the setback allowed by the planning area standard or 50 feet whichever is the greater distance [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO COASTAL ZONE LAND USE ORDINANCE SECTIONS: 23.05.034 (Grading) and 23.04.021.]*



**Policy 8: Timing of Construction and Grading.** *Land clearing and grading shall be avoided during the rainy season if there is a potential for serious erosion and sedimentation problems. All slope and erosion control measures should be in place before the start of the rainy season. Soil exposure should be kept to the smallest area and the shortest feasible period. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

**Policy 9: Techniques for Minimizing Sedimentation.** *Appropriate control measures (such as sediment basins, terracing, hydro-mulching, etc.) shall be used to minimize erosion and sedimentation. Measures should be utilized from the start of site preparation. Selection of appropriate control measures shall be based on evaluation of the development's design, site conditions, predevelopment erosion rates, environmental sensitivity of the adjacent areas and also consider costs of on-going maintenance. A site specific erosion control plan shall be prepared by a qualified soil scientist or other qualified professional. To the extent feasible, non-structural erosion techniques, including the use of native species of plants, shall be preferred to control run-off and reduce increased sedimentation. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*

**Policy 10: Drainage Provisions.** *Site design shall ensure THAT drainage does not increase erosion. This may be achieved either through on-site drainage retention, or conveyance to storm drains or suitable watercourses. [THIS POLICY SHOULD BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]*

**Policy 11: Preserving Groundwater Recharge.** *In suitable recharge areas, site design and layout shall retain runoff on-site to the extent feasible to maximize groundwater recharge and to maintain in-stream flows and riparian habitats. [THIS POLICY SHOULD BE IMPLEMENTED AS A STANDARD.]*

**Policy 12: Agricultural Practices.** *Agricultural practices shall minimize erosion and sedimentation through accepted management practices that aid soil conservation. The Soil Conservation Service should be encouraged to continue education programs regarding soils management. [THIS POLICY SHOULD BE IMPLEMENTED AS A STANDARD.]*

**Policy 13: Vegetation Removal.** *Vegetation Clearance on slopes greater than 30% in geologically unstable areas or on soils rated as having severe erosion hazards shall require an erosion and sedimentation control plan. Stream vegetation removal is discussed in greater detail in the Sensitive Habitat chapter. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.05.036 OF THE CZLUO.]*



**Policy 14: Soil Conservation Techniques.** *Proper soil conservation techniques and grazing methods shall to the maximum extent feasible be employed in accordance with the 208 water quality standards adopted by the California Water Quality Control Board. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]*

In addition, the Environmentally Sensitive Habitat policies of the LUP cited later in this report serve to minimize erosion and runoff, protect riparian habitat, and preserve overall water quality of coastal streams.

### **b) Analysis**

Many of the Coastal Watershed policies cited above are implemented by Sections 23.05.034 and 23.05.036 of the Coastal Zone Land Use Ordinance (CZLUO) - Sections that are proposed for revision by the subject amendment. These ordinances regulate grading and drainage in the coastal zone, and are the primary means by which the County implements LUP standards for the protection of coastal water quality.

The State of California has adopted a *Plan for California's Nonpoint Source Pollution Control Program*, containing a variety of management measures to further improve protection of water quality during the siting and design, construction, and post-development phases. These management measures can be generally identified as 1) preventing and reducing erosion; 2) preventing degradation to areas important to water quality functions, particularly riparian areas; 3) limiting impervious surfaces; 4) limiting discharge of toxic materials and/or nutrients; and 5) addressing runoff from existing developed areas, including runoff from roads and bridges. The current amendment provides an opportunity to incorporate these and other water quality protection improvements into the LCP, as recommended by the *Periodic Review of the San Luis Obispo County Certified Local Coastal Program* adopted by the Commission in July 2001.

In general, the proposed amendment would improve the implementation of LUP policies for coastal watershed protection by updating current regulations regarding the management of erosion, sedimentation, and runoff. However, the amendment contains some weaknesses that prevent it from adequately carrying out LUP resource protection policies.

### **1) Grading Definition**

The amendment exempts a wide range of grading activities from the need to obtain a grading permit, both by placing numeric parameters around the definition of grading and proposing a wide range of exemptions to grading permit requirements. This is especially problematic where the grading permit process provides the equivalent of coastal development permit review, such as when there is no structural development associated with the grading to trigger the need for a land use permit (please see Figure 1 on page 35 of this report).



As previously described, the proposed definition of grading is limited to earth moving activities that involve more than 50 cubic yards and excavations of certain depths or the creation of slopes with specified heights and steepness. A significant amount of earth moving could take place within these parameters – activities that could degrade coastal water quality and aquatic habitats by causing erosion, sedimentation, and the discharge of pollutants. By exempting such development from the definition of grading, these activities would not be subject to compliance with the LCP’s erosion and sedimentation control requirements (among other important resource protection standards). Therefore, the amendment’s proposed definition of grading fails to carry out the coastal watershed policies of the LUP cited above.

To address this issue, the suggested modifications propose a definition that closely follows the LCP’s current definition of grading<sup>8</sup>. Specifically, Suggested Modifications 1 and 11 propose to expand on the definition of grading proposed by the County for Section 23.05.044 as follows:

*Grading – Any activity which involves the physical movement or disturbance of earth material by mechanized means. This includes any excavating, filling, stockpiling, movement of earth material in connection with clearance of vegetation, compaction of soil, creation of borrow pits, or combination thereof, but does not include surface mining or quarrying operations (including the extraction and stockpiling of excavated products and the reclamation of mined lands) operating in conformance with Section 23.08.180. Grading also does not include plowing, seeding, planting, cultivating, or harvesting activities within an established farming operation, including lands that have been lying fallow as part of a conventional rotational cycle.*

As proposed by the County and maintained by the suggested modifications, the above definition classifies earth moving associated with mining and quarry as being outside the definition of grading. This is appropriate because the CZLUO contains specific standards and permitting requirements that address the impacts of quarries and mines.

Similarly, the suggested modifications revise the proposed definition to state that grading does not include earth-moving activities associated with the removal or harvest of vegetation for agricultural purposes. The basis for this distinction can be found in Coastal Act Section 30106, which defines development as including “the removal of major vegetation *other than for agricultural purposes*”.

In order to make the distinction between grading and earth moving that occurs as a consequence of agricultural harvesting activities, the suggested modifications call out specific agricultural activities that do not fall within the definition of grading. These include “plowing, seeding,

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<sup>8</sup> Section 23.11.030 of the CZLUO currently defines grading as “Any excavating, filling, or combination thereof. See Section 23.05.020 of this title.” The referenced ordinance provides a list of the grading standards contained in the CZLUO, and does not provide any additional specificity to the definition contained in Section 23.11.030.





planting, cultivating, and harvesting activities conducted within an established farming operation, including lands that have been lying fallow as part of a conventional rotational cycle”.

A critical aspect of this distinction is that earth-moving activities occur outside of the bounds of an existing agricultural operation fall within the definition of grading, and must comply with grading, drainage, and permitting requirements. In other words, the physical movement of earth material for the purpose of agricultural cultivation is considered to be development, in the form of grading, when it is conducted in an area where earth moving for cultivation purposes has not previously occurred.

Distinguishing certain agricultural activities from the definition of grading is an important issue for the farmers and ranchers of San Luis Obispo County. During the public hearings regarding the Periodic Review of the San Luis Obispo County Local Coastal Program, the Commission received testimony from farmers and ranchers expressing their concern that regulations and permit requirements (including but not limited to grading permit requirements) threatens the viability of coastal farming operations. During these hearings, and at subsequent meetings with the Commission staff, representatives of the County Farm Bureau, the County Agricultural Commissioner, and the County Planning Department have stressed the need to minimize regulations, and in particular, permitting requirements, in order to protect the productivity and viability of agricultural operations. These are clearly important issues for the Commission to consider in light of Coastal Act and LCP Policies calling for the protection of coastal agriculture.

The submitted amendment seeks to address these issues, not by distinguishing agricultural activities from the definition of grading, but by establishing procedures under which agricultural grading could be exempted from permit requirements. As addressed in more detail below, this is an acceptable approach provided that it is processed in accordance with the categorical exclusion procedures established by Coastal Act Section 30610(e) and Title 14, Sections 13240 – 13249 of the California Code of Regulations.

In the interim, the CZLUO, as amended, must carry out the permitting requirements established by the Coastal Act and the resource protection policies of the certified LUP. Towards this end, the inclusion of all earth moving activities, other than those directly associated with the harvesting of vegetation for agricultural purposes, must be included in the definition of grading. Similarly, the proposed definition of structure needs to be revised because it excludes structures (e.g., fences) that are considered development by the Coastal Act. Only with these modification will the amendment carry out LUP Coastal Watershed Policies and the development permit requirements established by the Coastal Act.

## **2) Grading Permit Exemptions**

The grading permit exemptions proposed in Section 23.05.026 pose similar problems to the proposed definition of grading, in terms of carrying out the permitting requirements of the Coastal Act and implementing the Coastal Watershed Policies of the LUP. As described above, the Coastal Act and LCP definition of development specifically state that grading is development, and



Section 30600 of the Coastal Act requires any person wishing to undertake development in the coastal zone first obtain a coastal development permit. Only in the limited instances specified by Coastal Act Section 30610 and Title 14 of the California Code of Administrative Regulations is development exempt from this permit requirement.

The exemptions from grading permit requirements proposed by the amendment are far more extensive than the standard coastal development permit exemptions provided in the Coastal Act and the Administrative Regulations. This runs contrary to the permit requirements established by Coastal Act section 30600(a), which states:

*Except as provided in subdivision (e) [regarding emergency projects], and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.*

Coastal Act Section 30610 identifies the types of development exempt from coastal development permit requirements. In relation to the categories of exempted development proposed by the amendment, subsection (e) of Section 30610 provides:

*Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:*

...

*(e) Any category of development, or any category of development within a specifically defined geographic area, that the commission, after public hearing, and by two-thirds vote of its appointed members, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and, where the exclusion precedes certification of the applicable local coastal program, that the exclusion will not impair the ability of local government to prepare a local coastal program.*

...

The two-thirds vote required to adopt categorical permit exclusions (as opposed to the majority vote required for the certification of an LCP amendment), reflects the fact that such exemptions must be carefully evaluated to ensure that they do not interfere with local government's and the Coastal Commission's abilities to effectively implement LUP and Coastal Act Policies. Clearly, the development permit process is the principal way in which local governments and the Coastal Commission implement the Coastal Act and certified LCPs.



Exempting these development activities from grading permit requirements pursuant to an LCP amendment not only conflicts with the procedures for granting permit exclusions established by Coastal Act, but will also limit the CZLUO's ability to effectively carry out the of the LUP, particularly the Coastal Watershed provisions cited above. The amendment includes 10 pages of new grading permit exemptions. Approximately half of these are exemptions for agriculturally related grading, and are based on the type and extent of grading being proposed as well as coordination and review by the federal Natural Resource Conservation Service and the San Luis Obispo County Resource Conservation District. It also includes 5 pages of exemptions for non-agriculturally related grading activities, such as for grading within specific parameters for excavation and fill, exploratory excavations, the creation of fuelbreaks, the maintenance of flood control channels, and the creation of refuse disposal sites approved by the County Health Department.

Establishing these permit exemptions will interfere with the CZLUO's ability to carry out the LUP because, among other reasons, many of the exclusions would allow development with high potential for significant adverse impacts on coastal resources to occur without a permit. For example, flood control channels often support aquatic habitat containing rare and threatened biological resources. Maintenance activities may involve significant amounts of earth moving within and these channels, which could remove habitat, increased the potential for erosion and sedimentation, alter natural drainage and groundwater recharge patterns, and result in the discharge of pollutants to coastal waters. The allowance of such activities to proceed without a permit would eliminate the need for such projects to be reviewed for conformance with the LCP and Coastal Act, and would also preclude such projects from being appealed to the Coastal Commission, even though in most instances flood control maintenance occurs within the Commission's appeal jurisdiction.

Also of particular concern is that the development activities exempted by the proposed amendment could be undertaken within sensitive resource areas, such as within wetlands, streams, riparian habitats, and groundwater recharge areas. This runs counter to the limits on coastal development permit exemptions established by Title 14 of the California Code of Regulations, which specifically requires that development otherwise exempted by Coastal Act Section 30610 are required to obtain a permit when located in these areas, due to the potential for adverse impacts. Coastal water quality is especially susceptible to adverse impacts posed by the exempted development in these areas, both due to the nature of the exempted development (earth moving), and the important drainage, filtration, and infiltration functions that these areas serve. The permitting process provides the necessary means by which these impacts can be evaluated and addressed, and thereby is an essential tool for ensuring that LUP policies protecting Coastal Watersheds will be effectively carried out.



For these reasons, Suggested Modifications 2 and 3 delete the exemptions proposed in Section 23.05.026 of the amendment. These exemptions are replaced with a reference to the exemptions provided by Section 30610. Only with these modifications will the amendment effectively carry out the Coastal Watershed protection policies of the LUP and the permitting requirements established by the Coastal Act.

Notwithstanding these modifications, the Commission recognizes that many of the permit exclusions contained in the proposed amendment are intended to minimize permit requirements for development that has the potential to benefit both coastal agriculture and protection of coastal water quality. For example, the installation of best management practices that have been developed by state and federal resource agencies can help prevent the erosion of prime agricultural soils to the mutual benefit of agricultural productivity and water quality. The Commission is in strong support of this approach, and its staff will continue to work with the County and other interested parties to streamline permitting requirements for beneficial projects in accordance with the Categorical Exclusion procedures established by the Coastal Act and described above. The work that has been completed as part of this amendment submittal, combined with the work completed as part of the “Morro Bay Partners in Restoration Program”<sup>9</sup>, provides an excellent foundation for the County to develop and submit such a Categorical Exclusion for Commission certification.

### **3) Application Requirements and Review Procedures**

Notwithstanding the fact that development in the form of grading requires a coastal development permit unless exempted pursuant Coastal Act Section 30610, local governments have the ability to customize the permit applications requirements and review procedures established by their LCP’s so they are proportional to the impacts posed by the type, location, and intensity of the development activities. For example, grading permits required for small projects located outside of steep or unstable slopes and sensitive resource areas should not be subject to the same in-depth application and review procedures established by the modifications for development posing much more significant impacts.

The application and review requirements for development involving grading and/or drainage issues contained in the proposed amendment reflect such an approach. Development applications must contain varying levels of information, at various levels of detail, and are processed using different methods, based on the level of impact posed by the development. Similar to the County’s

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<sup>9</sup> The Morro Bay Partners in Restoration Program is a cooperative effort by the non-profit group Sustainable Conservation, the Natural Resources Conservations District, the San Luis Obispo County Resource Conservation District, and various regulatory agencies to reduce regulatory impediments to the implementation of best management practices. It has been modeled after programs being implemented in the Elkhorn Slough and Salinas River watersheds pursuant to Federal Consistency certifications by the Coastal Commission. In contrast to the Elkhorn Slough and Salinas watershed projects, the Morro Bay effort is attempting to streamline permit requirements for projects including but not limited to those with direct oversight by the federal government. Accordingly, the categorical exclusion process, rather than Federal Consistency, provides the appropriate means for streamlining coastal development permit requirements.



objective to minimize permit requirements through the exemptions discussed above, the intent of this approach is to maximize regulatory efficiencies and eliminate unnecessary requirements. It has also, however, along with other changes, contributed to the length and complexity of the LCP's grading and drainage regulations. This is reflected by the fact that the 18 pages of grading and drainage regulations contained in the current CZLUO would be expanded to 59 pages by the amendment.

Although the Commission believes that the length and complexities of the proposed ordinances could be simplified and condensed, and encourages the County to pursue such changes, the proposed application and review standards are, in general, an acceptable means for implementing Coastal Watershed policies of the LUP. There are, however, a few areas where these permitting and application requirements need to be supplemented, in order to ensure that the potential impacts to coastal resources are effectively evaluated and regulated. The Commission has therefore suggested the following modifications, as summarized below:

- Suggested Modification 2 requires emergency permits and follow up coastal development permits for grading conducted in an emergency;
- Suggested Modification 4 requires grading plans and grading permit applications to include the information needed to evaluate potential impacts to water quality and groundwater recharge. It also requires an engineered grading plan where there will be 10,000 square feet or more of site disturbance;
- Suggested Modification 5 requires a drainage plan where development will install more than 5,000 square feet of impervious surfacing, and requires all drainage plans to include provisions for pollution prevention;
- Suggested Modification 6 calls for the erosion and sedimentation control plan required by the amendment to be incorporated as a component of drainage pollution and prevention plans, and expands on the requirements for an erosion and sedimentation control plan, for example by requiring such a plan whenever the development site is located within 300 feet of a natural watercourse or aquatic habitat.
- Suggested Modification 8 identifies the specific water quality issues that must be considered during environmental review. This modification also clarifies that grading permits can not be extended beyond the effective date of an associated coastal development permit, and that remediation of grading permit violations must occur in compliance with all applicable permitting requirements;
- Suggested Modification 9 clarifies that changes to approved grading plans necessitate the issuance of a new permit where new impacts to coastal resources are posed by the change.



Through the modifications to the amendment submittal summarized above ensure a comprehensive review process for Grading and Drainage (and Pollution Prevention) Plans, and will help ensure that the measures necessary to protect coastal water quality will be identified and effectively implemented. Therefore, only as modified will the application and permitting requirements established by the amendment be effective to carry out the Coastal Watershed protection policies of the LUP and the coastal development permit requirements of the Coastal Act.

#### **4) Grading, Drainage, and Groundwater Recharge Standards**

Irrespective of grading permit requirements and grading and drainage plan review procedures, the amendment requires that all development activities be conducted consistent with the established in Section 23.05.040. These standards will certainly help achieve the coastal watershed protection objections set forth by Chapter 9 of the LUP. They are not, however, adequate to implement LUP Coastal Watershed provisions unless they are implemented as part of the coastal development permit process, for the reasons discussed above.

Another problem with the proposed with the proposed standards is that they do not adequately address all potential sources of pollution from new development. The control of urban non-point source pollution requires the use of two primary strategies: the prevention of pollutant loadings and the treatment of unavoidable loadings. A combination of pollution prevention and treatment practices is favored because planning, design, and education practices are generally more effective, require less maintenance, and are more cost-effective in the long term. In addition, the integration of simple and inexpensive Best Management Practices (BMPs) within all new development can have a significant cumulative effect supporting both watershed and water quality protection.

The major opportunities to control non-point source loadings occur during the following three stages of development, previously mentioned above: (1) the siting and design phase, (2) the construction phase, and (3) the post-development phase. Before development occurs, land in a watershed is available for a number of pollution prevention and treatment options, such as setbacks, buffers, or open space requirements, as well as wet ponds or constructed urban runoff wetlands that can provide treatment of the inevitable runoff and associated pollutants. In addition, siting requirements and restrictions and other land use ordinances, which can be highly effective, are more easily implemented during this period.

In addition to the selection of proper BMPs, the sizing of BMPs is also of concern. The majority of runoff is generated from small storms which typically convey a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost. The Commission has previously found that sizing post-construction BMPs to accommodate the runoff from the 85th percentile storm runoff is often appropriate to address runoff concerns. Sizing BMP capacity beyond this standard can lead to insignificant increases in pollutants removal (and hence water quality protection), relative to the



additional costs. The Numeric Design Standard is just that: a goal for which water quality protection measures should be based. The implementation of this Numeric Design Standard is reflected in modifications (Suggested Modifications 20, 21, and 24) to the amendment submittal. The size and effectiveness of those chosen BMPs can be determined by both the applicant and staff analyst using the referenced guidance documents developed by various state and federal agencies.

In order to ensure that the amendment provides adequate standards to control of polluted runoff and maximize groundwater recharge opportunities, the Commission has suggested the following modifications, summarized below:

- Suggested Modification 7 supplements the proposed requirements for groundwater recharge by requiring the minimization of impervious surfaces, clustering of building sites, limiting the size of roads and driveways, and directing drainage to pervious areas of the site through vegetated filter strips (which help remove sediments and pollutants from runoff);
- Suggested Modification 8 establishes standards for water quality protection, including management of runoff, protection of natural drainages, and minimization of pollutant loads. It also expands on grading standards, among other ways by requiring the removal of all temporary water diversions and fill, prohibiting the use of non-native plant species during revegetation, and establishing revegetation success criteria. With respect to drainage standards, the modification requires drainage systems to be constructed in accordance with *California Storm Water Best Management Handbooks*, and that they be sized to meet the 85% Numeric Design Standard. Regarding Dam and Reservoir standards, the modification requires a grading permit for the construction of such facilities. Finally, in terms of Erosion and Control Standards, the modification requires the application of such controls between October 1 and April 15 (as opposed to October 15 – March 15).

### c) Water Quality Conclusion

The proposed amendments to the grading and drainage standards of the San Luis Obispo County's certified Implementation Plan are not adequate to carry out the Coastal Watershed protection policies of the certified Land Use Plan for the following reasons:

- The proposed definition of grading inappropriately excludes earth moving activities that constitute grading, and therefore, development;
- The proposed exemptions from grading permits do not ensure the protection of water resources and do not carry out the coastal development permit requirements of the Coastal Act;
- The proposed application and review standards do not allow for effective evaluation of water quality impacts or implementation of necessary water quality protection measures. Nor do they carry out Coastal Act development permit requirements; and
- The proposed standards do not effectively maximize groundwater recharge or adequately



address pollution prevention and Coastal Act permitting requirements.

As a result, the amendment must be denied as submitted, and can only be approved if modified as suggested.

## 2. Environmentally Sensitive Habitats

### a) Policies

The San Luis Obispo County LCP contains numerous policies related to the protection of Environmentally Sensitive Habitats, a few of which are listed below for reference purposes.

**Policy 1 for Environmentally Sensitive Habitats:** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resource shall be allowed within the area.*

Policy 14 for Environmentally Sensitive Habitats: Development adjacent to coastal wetlands shall be sited and designed to prevent significant impacts to wetlands through noise, sediment or other disturbances. Development shall be located as far away from the wetland as feasible, consistent with other habitat values on the site.

**Policy 18 for Environmentally Sensitive Habitats:** *Coastal streams and adjoining riparian vegetation are environmentally sensitive habitat areas and the natural hydrological system and ecological function of coastal streams shall be protected and preserved.*

**Policy 33 for Environmentally Sensitive Habitats:** *Vegetation which is rare or endangered or serves as cover for endangered wildlife shall be protected against any significant disruption of habitat value. All development shall be designed to disturb the minimum amount possible of wildlife or plant habitat.*

### b) Analysis

Given the fact that many environmentally sensitive habitats identified by the LUP are aquatic (i.e., wetland, riparian, and marine habitats), their preservation and enhancement is partly dependent upon the maintenance and enhancement of coastal water quality. The Coastal Watershed issues addressed in the preceding finding are therefore directly relevant to the evaluation of the amendment's ability to carry out LUP ESHA policies, and are incorporated into this finding by reference.





Other ESHA issues raised by the amendment include the potential for grading activities and drainage and recharge facilities to adversely impact sensitive terrestrial habitats. For example, while the amendment is explicit in limiting some grading activities from taking place within 100 feet of an ESHA, this requirement does not apply to all grading activities, and thus, is inconsistent with ESHA Policy 1. In order to prevent development from disturbing environmentally sensitive habitats, modifications to the amendment submittal are necessary to restrict and regulate grading and drainage within and adjacent to ESHA. These include Suggested Modification 3, which eliminates permit exemptions for development activities that could occur within or adjacent to ESHA; Suggested Modification 5, which requires a Drainage and Pollution Prevention Plan to be developed when development will occur within 100 feet of a wetland; and Suggested Modification 10, which prohibits the installation of storm water impound areas within 100 feet of an ESHA.

In addition, although the amendment proposes language that calls for the revegetation of disturbed areas, it does not require the use of native plants. This is inconsistent with policies to protect environmentally sensitive habitats from exotic and invasive species, and is resolved by Suggested Modifications 10.

Finally, the provisions of the proposed amendment do not protect streams and riparian habitats consistent with LUP ESHA policies because it only protects streams that are mapped by USGS quadrangles. To ensure that all streams and wetlands are protected, Suggested Modifications 5, 6, and 10 eliminate the ordinance's reliance on USGS maps. This problem is also addressed by Suggested Modification 11, which replaces the proposed definition of "Blue Line Stream/Creek", with the definition of stream used by the California Department of Fish and Game. Only with these modifications will the proposed amendment carry out the ESHA protection policies of the LUP.

### 3. Visual and Scenic Resources

#### a) Policies

The following policies regarding the protection of visual and scenic resources are relevant:

**Policy 1 for Visual and Scenic Resources:** *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas and sensitive habitats are to be preserved protected, and in visually degraded areas restored where feasible.*

**Policy 5 for Visual and Scenic Resources:** *Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.*



### b) Analysis

As ESHA protection is, in many instances, dependent upon the maintenance of coastal water quality, so is the protection of visual resources. Indeed, the riparian corridors, wetland habitats, and Pacific Ocean are some of the most scenic attributes of the San Luis Obispo coastal zone, and the continuance of these habitats is an essential component to the preservation of visual resources. Thus the water quality findings contained in this staff report are included in these visual resource findings by reference.

Other important visual considerations are that, as previously described, large amounts of earth moving, land form alteration, and vegetation removal could occur without a permit, either because the activity is not defined as grading or excluded from grading permit requirements. Such activities have the potential to adversely impact scenic coastal resources. For this reason, the definition of grading should be revised, and the proposed exemptions deleted, as proposed in the suggested modifications.

In addition, proposed Section 23.05.036b allows the Director of Planning and Building to issue a grading permit for development that would have substantial adverse long-term visual effects, provided that overriding findings have been made. The LUP policies do not provide for “override” findings to reduce standards for resource protection. Ordinance provisions that allow relaxed standards are not adequate to carry out the LUP policies, and as a result, cannot be approved. Suggested Modification 25 corrects this problem by requiring all grading activities to be conducted in a way that will not create substantial adverse long-term visual effects. Only with this modification will the amendment carry out LUP policies intended to protect visual and scenic resources.

## 4. Archaeology

### a) LUP Policies

The following policy regarding the protection of archaeological resources is relevant:

**Policy 1 for Archaeology:** *The county shall provide for the protection of both known and potential archaeological resources. All available measures, including purchase, tax relief, purchase of development rights, etc., shall be explored at the time of a development proposal to avoid development on important archaeological sites. Where these measures are not feasible and development will adversely affect identified archaeological or paleontological resources, adequate mitigation shall be required.*

### b) Analysis

Perhaps the biggest potential impact to archaeological resources is the proposed definition of grading (discussed above) because it allows an unlimited amount of grading activity, less than two



feet in depth, to occur without monitoring or benefit of a permit. As a result, a significant amount of archeological resources could be impacted, without proper mitigation, because the earth moving activity would not qualify as “grading,” and thus, would not be subject to review for compliance with LUP standards.

In addition, while the amendment is explicit in limiting some grading activities from taking place within archaeologically sensitive areas, this stipulation is not made for all grading activities, and thus, is inconsistent with Policy 1 for Archaeology. The elimination of the proposed permit exemptions resolves this issue. This suggested modification, and the suggested modification to the definition of grading, are therefore necessary to ensure that the amendment carries out the archaeological resource protection requirements of the LUP.

### **C. California Environmental Quality Act (CEQA)**

The Coastal Commission’s review and development process for Local Coastal Programs and amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis on LCP amendments, although the Commission can and does utilize any environmental information that the local government has developed. In this case the County approved a Negative Declaration for the amendment finding that it did not generate any significant environmental impacts.

In contrast to the conclusions of the County’s environmental analysis, this report has identified that the proposed amendment poses significant adverse impacts on the environment, among other ways, by placing inappropriate limitations on the definition of grading, and by exempting a wide range of potentially damaging development activities from permitting requirements. For those development activities that are defined as grading, and that are required to obtain grading and development permits, this report finds that the proposed amendment does not provide adequate standards to prevent new development from adversely impacting coastal water quality. Modifications have been suggested to address these issues and avoid adverse environmental impacts. Approval of the amendment, will not have significant environmental effects within the meaning of CEQA only if it is modified as suggested.

